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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

J THOMPSON, et al., Individually and on)	No. 2:16-cv-01183
Behalf of All Others Similarly Situated,)	
)	<u>CLASS ACTION</u>
Plaintiffs,)	
)	Honorable Judge Tena Campbell
vs.)	
)	ORDER GRANTING CO-LEAD CLASS
1-800 CONTACTS, INC., et al.,)	COUNSEL'S MOTION FOR AN AWARD
)	OF ATTORNEYS' FEES AND EXPENSES
Defendants.)	AND SERVICE AWARDS TO CLASS
)	REPRESENTATIVES

Co-Lead Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Service Awards to Class Representatives (ECF No. 330, the "Fee and Expense Application") came before the Court for hearing on October 20, 2020. The Court has considered all papers filed and proceedings held in connection with the above-captioned Action, including any written objections received regarding the Fee and Expense Application, and all matters presented at the October 20, 2020 Fairness Hearing, and is fully informed of these matters. Adequate notice having been given to the Settlement Classes as required by the Court's June 3, 2020 Order Preliminarily Approving Settlement with Remaining Defendant 1-800 Contacts, Inc., Conditionally Certifying Settlement Class, Approving Notice Program and Preliminarily Approving Plan of Distribution (ECF No. 325), and having considered all papers and proceedings in this matter, the Court finds, concludes, and orders as follows:

1. This Order incorporates by reference the definitions in the Stipulations and Agreements of Settlement (*see* ECF Nos. 139-2, 245-2, 263-2 and 321-7, Ex. A (collectively, "Settlement Agreements")) and all capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreements.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action and their counsel, including all members of the Settlement Classes.

3. Notice of the Fee and Expense Application was provided to potential members of the Settlement Classes in a reasonable manner, and such Notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure ("Rule") and due process requirements. No class member has objected to the Fee and Expense Application.

4. Members of the Settlement Classes were given the opportunity to object to the Fee and Expense Application in compliance with Rule 23(h)(2).

5. The Fee and Expense Application is granted as described below.

6. Co-Lead Class Counsel are hereby awarded attorneys' fees in the amount of 33% of the Settlement Fund, or \$13,200,000, plus interest accrued at the same rate as accrued for the Settlement Fund, and \$4,108,181.96, plus interest accrued at the same rate as accrued for the Settlement Fund in payment of litigation expenses.

7. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and finds that:

(a) The Settlement Agreements have created four settlement funds totaling \$40 million (collectively, the "Settlement Fund") that have been transferred to an interest-earning Escrow Account administered by Escrow Agent for the benefit of the Settlement Classes pursuant to the terms of the Settlement Agreements;

(b) Members of the Settlement Classes who submit acceptable claim forms and whose claim is authorized will benefit from the Settlement Agreements because of the efforts of Co-Lead Class Counsel;

(c) The fees awarded to Co-Lead Class Counsel are fair and reasonable and are supported by the *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), factors used by courts within this Circuit to evaluate the appropriateness of fee applications;

(d) The expenses sought by Co-Lead Class Counsel are reasonable and were necessarily incurred;

(e) The Notice provided to potential members of the Settlement Classes stated that Co-Lead Class Counsel would seek attorneys' fees of up to 33% of the Settlement Fund, the payment of litigation expenses, and interest earned on such fees and expenses (at the same rate as earned on the Settlement Fund), accruing from inception of the Settlement Fund, and directed any potential members of the Settlement Classes to a website with more information about this matter. Plaintiffs' Fee and Expense Application has been publicly available since it was filed on August 21, 2020;

(f) Co-Lead Class Counsel have prosecuted the Action with skill, perseverance, and diligence, as reflected by the substantial Settlement Fund achieved and the positive reception of the Settlement Agreements by the Settlement Classes;

(g) The Action involves complex factual and legal issues that have been extensively researched and litigated by Co-Lead Class Counsel, and vigorously disputed in motion practice and discovery for over three years;

(h) A significant risk exists that, without the Settlement Agreements, Plaintiffs and members of the Settlement Classes may have recovered significantly less or nothing from the Settling Defendants;

(i) Public policy considerations support the requested fees, as the successful prosecution of this Action required lawyers with considerable expertise; and

(j) The amount of attorneys' fees and expenses awarded is appropriate to the specific circumstances of the Action and consistent with awards in similar cases in the Tenth Circuit.

8. As stated in the order preliminarily appointing Co-Lead Class Counsel, ECF No. 70, Co-Lead Class Counsel shall allocate the awarded attorneys' fees and expenses among Co-Lead Class Counsel and other counsel in a manner which, in Co-Lead Class Counsel's judgment and discretion, reflects the contributions of and risk incurred by such counsel in prosecuting and settling the Action.

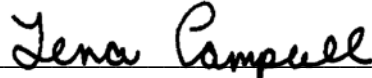
9. Settlement Class representatives, J Thompson, Iysha Abed, Daniel J. Bartolucci, William P. Duncanson, Tyler Nance, Leia Pinto, Jill Schulson, and Edward Ungvarsky, are each hereby awarded \$12,500 from the Settlement Fund in recognition of their contributions related to the Action on behalf of the Settlement Classes. The requested service awards are reasonable and in line with similar awards approved in other cases in the Tenth Circuit.

10. This Fee and Expense Award is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlements and is also independent of the Court's consideration the Plan of Distribution.

11. The fees and expenses, and any interest earned thereon, and the service awards shall be payable from the Settlement Fund upon entry of this Order.

IT IS SO ORDERED.

DATED: October 20, 2020



THE HONORABLE TENA CAMPBELL
UNITED STATES DISTRICT JUDGE